

REPORT
OF
PROCEEDINGS
UNDER
THE COMBINES INVESTIGATION ACT
FOR THE
YEAR ENDED MARCH 31, 1911

Being an Appendix to Annual Report of the Department of Labour, 1910-11

PRINTED BY ORDER OF PARLIAMENT



OTTAWA

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EXCELLENT MAJESTY

1911

*To His Excellency the Right Honourable Sir Albert Henry George, Earl Grey,
G.C.M.G., &c., Governor General of Canada.*

MAY IT PLEASE YOUR EXCELLENCY:

The undersigned has the honour to forward to Your Excellency the accompanying Report of the Deputy Minister on the proceedings under the Combines Investigation Act for the fiscal year ended March 31, 1911, all of which is respectfully submitted.

W. L. MACKENZIE KING,
Minister of Labour.

DEPARTMENT OF LABOUR,

OTTAWA, May 15, 1911.

To the Honourable W. L. MACKENZIE KING, M.P., C.M.G.,
Minister of Labour.

SIR,—I have the honour to submit a report on the proceedings under the Combines Investigation Act for the fiscal year ended March 31, 1911.

During the past year many inquiries were received in the Department of Labour for information relative to the Act of the Dominion Parliament known as The Combines Investigation Act, Chapter 9 of 9-10 Edward VII., which became law on May 4, 1910, the general administration of which statute devolves upon the Minister of Labour.

The object of this legislation, as expressed in the last annual report of the Department of Labour is to 'place at the disposal of the people a readier and, it is believed, a more effective means than is now available in Canada of disclosing and of remedying the abuses of combines which may be formed whether as corporations, monopolies, trusts or mergers, or in the looser forms of agreements, understandings, or arrangements, for the purpose of unduly enhancing prices or of restricting competition to the detriment of consumers or producers.' In the last annual report of the Department of Labour, a chapter was devoted to this measure,¹ and the text of the same was also published in the form of an appendix.²

The subject of industrial and trade combinations, trusts, mergers, &c., continued to engage widespread attention throughout the past year in Canada, the United States, and elsewhere, and formed the theme of a most interesting debate in the House of Commons on February 2, 1911.

An application under the Combines Investigation Act for the establishment of a Board of Investigation was made before the Honourable Mr. Justice L. J. Cannon of the Superior Court, Quebec, on November 10, 1910, and resulted in the issue by Judge Cannon on February 25, 1911, of an order directing the establishment of a Board under section 7 of the Act. The application and order referred to had to do with the existence of an alleged combine on the part of the United Shoe Machinery Company of Canada, in respect of the manufacture and sale of boot and shoemaking machinery. A Board was on February 27 established by the Minister of Labour for the investigation of the above matter. On April 1, an order was granted by the Superior Court, Montreal, on application of the parties concerned in the alleged combine, by which proceedings before the Board were suspended pending the hearing of an appeal before the Court of Appeals of the Province of Quebec, in which the latter was asked to declare invalid Judge Cannon's order of February 25, and the subsequent establishment of the Board.

¹ See pp. 89-94 of Annual Report for year ending March 31, 1910.

² See pp. 219-231 of Appendix to Annual Report for year ending March 31, 1910.

PROCEDURE PRIOR TO GRANT OF ORDER.

In his order, above mentioned, Mr. Justice Cannon declared that, after having read the application which was presented to him in this matter, under date of November 10, and the statutory declaration accompanying the same, he was satisfied 'that there is reasonable ground for believing that a combine exists with regard to the manufacture and sale of machinery for manufacturing boots and shoes, which has operated to the detriment of consumers and producers, and that it is in the public interest that an investigation should be held.'

The application to Mr. Justice Cannon was signed by Napoléon Drouin, Louis Létourneau, Eugène Lamontagne, Michel Brunet, Joseph-Etienne Samson, Joseph Picard, Ernest Caron, J. Alphonse Langlois, Robert Stewart, and Charles W. Walcot, all of the city of Quebec, and may perhaps be regarded as, to some extent, a sequel to proceedings in the case of the United Shoe Machinery Company of Canada *vs.* Brunet, et al., which was tried before Mr. Justice Cimon, of the Superior Court, Quebec, in March, 1906, and which was carried in appeal to the Court of King's Bench and thence to the Judicial Committee of the Privy Council.

The case of the United Shoe Machinery Company of Canada *vs.* Brunet, et al., here referred to, was an action for injunction and damages based on alleged breach of contract by the defendants for the leasing and use of certain machinery employed in the manufacture of boots and shoes. To the action for injunction and damages the defendants pleaded that they had been induced to take the said leases by false representations, and that the covenants therein, by reason of their unjust and oppressive nature and of the practical monopoly which the United Shoe Machinery Company of Canada had acquired in Canada in the manufacture and supply of shoemaking machinery, were in restraint of trade and therefore void. The action was dismissed by the Superior Court, the judgment of the latter being affirmed in the year following on appeal by the Court of King's Bench. The judgment of the trial court was, however, reversed by the Judicial Committee of the Privy Council.

In delivering the judgment of the Privy Council in this case, Lord Atkinson said in part:

'If the monopoly established by the appellants and their mode of carrying on their business be as oppressive as is alleged (upon which their Lordships express no opinion), then the evil, if it exists, may be capable of cure by legislation or by competition, but in their view not by litigation. It is not for them to suggest what form the legislation should take, or by what methods the necessary competition should be established. These matters may, they think, be safely left to the ingenuity and enterprise of the Canadian people. On the whole, therefore, their Lordships are of opinion that the respondents' defences cannot be sustained, and that the appellants are entitled to have the injunction they obtained made perpetual.'

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TERMS OF APPLICATION.

The application before the Honourable Mr. Justice Cannon of November 10, was in the following terms:—

APPLICATION FOR ORDER DIRECTING AN INVESTIGATION.

THE COMBINES INVESTIGATION ACT.

Dated at Quebec, this 10th day of November, 1910.

In the matter of an alleged combine with regard to machinery for manufacturing boots and shoes.

To the Honourable L. J. CANNON,

a Judge of the Superior Court for the Province of Quebec.

The undersigned are of opinion that a combine exists with regard to the manufacture and sale of machinery for manufacturing boots and shoes, and that prices have been enhanced and competition has been restricted by such combine to the detriment of consumers and producers.

The undersigned therefore apply for an order under the 'Combines Investigation Act' directing an investigation into such alleged combine.

The nature of the combine and the persons believed to be concerned therein appear from what follows:—

The United Shoe Machinery Company of Canada, a corporation organized under the laws of the State of New Jersey, one of the United States of America, hereinafter referred to as 'the company' deals in machinery of practically all kinds required and used in manufacturing boots and shoes, and also in supplies used in the making of boots and shoes. The company does not and for years past has refused to sell its machines, but leases them to manufacturers who may require them for use in their business, and one or more of the machines controlled by the company have heretofore been used in all boot and shoe factories as part of their customary equipment. All, or practically all, the leases are under written contracts for long periods, usually of twenty years, each covering one machine, and are therefore practically interminable, and these contracts contain conditions such as the following, which are extracted from some of said contracts:—

The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers or other inscription now or hereafter impressed on or affixed to the leased machinery by the lessor.

The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

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The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

The lessee shall use the leased machinery to its full capacity on all boots, shoes and other footwear made in his factory in the manufacture of which it can be used, but the leased machinery shall not, nor shall any part thereof, be used in the manufacture of any boots, shoes or other footwear which are or shall be welted or the soles stitched on welt sewing or sole stitching machines not leased from the lessor, or in the manufacture of any turn boots, shoes or other footwear, the soles of which are or shall be attached to their uppers by turn sewing machines not leased to the lessee by the lessor, or in the manufacture of any boots, shoes or other footwear which have been or shall be pegged, slugged, heel seat nailed, or otherwise partly made by the aid of any pegging or metallic machinery not leased to the lessee by the lessor or its assignor.

'The lessee agrees as rent or royalty for the said machinery to purchase of the lessor at the prices established by the lessor all the fastening materials used by him or in connection with the said machinery.

'If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use exclusively tacking mechanisms and appliances held by him under lease from the lessor for doing all work in the manufacture of all boots, shoes and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may, at its option, terminate forthwith by notice in writing this lease and license and any other lease or license of lasting machines, lasting machinery, lasting mechanisms, or lasting devices then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to, and control of all the leased machinery, and all lasting machines, lasting machinery, lasting mechanisms and lasting devices held by the lessee under any other lease or license from the lessor or its assignors shall thereupon revert in the lessor free from all claims and demands whatsoever.

'The lessee admits the validity of each and every of the Letters Patent of the Dominion of Canada owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery, and agrees that he will not directly or indirectly infringe or contest the validity of, or the title of the lessor to any of said patents. The termination or cesser of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth.'

The company will not sell its machines nor will it lease them except on conditions such as above recited, and such has been its practice for many years past and therefore all, or practically all the boot and shoe machinery now in use in Canada is held subject to conditions as hereinbefore set forth.

A number of the machines are protected by Canadian patents and can be obtained only from the company. Boot and shoe manufacturers requiring any of these machines can obtain them only on condition of signing contracts such as above indicated, and by the terms of such contracts are forced to buy all or practically all of their other machinery, and a large part of their supplies, from the company.

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Among the more important machines covered by such contracts are lasting machines, eyeletting machines, channelling machines, turners, screw machines, slugger machines, tacking machines, nailing machines, pegging machines and compressing machines.

Inasmuch as the company has heretofore for a long period kept control of the market for shoe machinery by every means in its power, especially by insisting on leases as aforesaid, practically all manufacturers of boots and shoes are in consequence bound to it by contracts containing conditions as aforesaid and unable, except at the cost of complete disorganization of their factories and at excessive expense, to purchase or acquire any machines they may require or deem useful in their business except from the company. The result is that manufacturers of boots and shoes all throughout Canada are absolutely tied down to the company, compelled to buy the company's machines, parts and supplies, as provided in their contracts, at the company's own prices, and are deprived of the benefit of all competition.

The contracts, agreements and acts of the company as aforesaid constitute an arrangement which is a combine within the meaning of the Act.

Moreover the said company is the Canadian representative of the United Shoe Machinery Company of Boston, a foreign corporation, and is owned or controlled by the said last mentioned or parent corporation or interests allied thereto and in the interest and advantage of the said parent corporation.

The said parent corporation is a combination, merger or amalgamation of numerous companies manufacturing and dealing in boot and shoe machinery, and controls in the United States the business of manufacturing and dealing in boot and shoe machinery in a somewhat similar way and extent to those above indicated as the method and extent of the control of the boot and shoe machinery business in Canada by the United Shoe Machinery Company of Canada.

The said United Shoe Machinery Company of Canada and its various contracts, agreements and arrangements above set out, and the control of the said boot and shoe machinery business in Canada as aforesaid constitutes a trust, monopoly, merger and a combine within the meaning of the Act.

The persons believed to be concerned therein are the said United Shoe Machinery Company of Canada and its officers and agents, more especially, Sidney W. Winslow, its president, and George W. Brown, its general manager and treasurer, both resident in or near Boston in the Commonwealth of Massachusetts, and Frank W. Knowlton, of Montreal, its manager and agent of the business in Canada; and also the various boot and shoe manufacturers in Canada with whom such contracts are made, among others, The John Ritchie Co., Ltd., The Wm. Marsh Co., Ltd., Tourigny & Marois, The Louis Gauthier Co., all of the city of Quebec, also J. B. Blouin & Co., of the town of Lévis, as well as practically all manufacturers of boots and shoes in Canada.

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The said combine affects prices as follows:—

It compels all manufacturers of boots and shoes having contracts with the company or requiring any one of their machines to obtain all their machinery from it and also to buy from the company certain supplies used in the manufacture of boots and shoes. It prevents them from buying machinery that would do the same or better work from other manufacturers or dealers, and in like manner restricts their purchase of supplies. It thus places them at the mercy of the company as regards prices for machinery and supplies, increases the cost of their machinery and supplies and thus increases the cost of the manufactured article, boots and shoes. By thus increasing the cost of manufacture the price, to the consumer is thereby increased on all the principal lines of boots and shoes. The percentage of such increase the applicants are unable to state, but it must be large for the extra cost of supplies purchased from the company used in connection with the metallic system alone is between forty and fifty per cent over the cost of similar supplies in the open market.

The said combine also restricts competition in machinery used in the manufacture of boots and shoes as it destroys the market for all other manufacturers of and dealers in such machinery, who are unable to make sales to boot and shoe manufacturers. It prevents the establishment of Canadian industry in the making of such machinery and keeps the whole of such business in the hands of the company, and it stifles all incentive to invention or improvement in machines, the more so as the company insists on the letter of its contract and invokes the aid of the courts to prevent the purchase by manufacturers of boots and shoes of any machines other than its own. On the other hand the company's unchallenged control of the shoe machinery industry in the past has been so complete that there has been no incentive on its part for effort to improve its machinery.

This combine also by increasing the cost of the manufacture of boots and shoes and thus necessarily making the selling price of the manufactured article higher restricts the manufacturers' sales and thus to some extent injures the manufacturer as well as the consumer.

It works to the detriment of makers of competing machines as it prevents the sales of such machines.

The company is the holder of patents under the Patents Act and has made use of the exclusive rights and privileges which as such holder it controls so as to restrain and injure trade or commerce as aforesaid.

STATEMENT ACCOMPANYING APPLICATION FOR ORDER.

Dated at Quebec, this 10th day of November, 1910.

The undersigned hereby authorize Alexander Falconer, K.C., of 157 St. James Street, Montreal, Que., to act as our representative for the purpose of 'The Combines Investigation Act' and to receive communications and conduct negotiations on our behalf.

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The names and addresses of the persons applying for the aforesaid order are as follows:—

Signed)

Eug. Lamontagne, 85 Dalhousie St.
 L. Letourneau, 12 Rue Smith
 Ernest Caron, 95 Rue Scott
 Dr. Michel Brunet, 25 Rue St. Joseph
 J. E. Samson, 178 Rue Fleurie
 Jos. Picard, 218 Rue St. François
 J. A. Langlois, 1263 St. Valier
 Robert Stewart, 92 St. Peter St.
 C. W. Walcot, 98 St. Peter St., Quebec.
 Nap. Drouin, 206 Rue St. François, Quebec.

[STATUTORY DECLARATIONS IN SUPPORT OF APPLICATION.]

CANADA,

Province of Quebec,

To Wit:

I, Napoleon Drouin, of the city of Quebec, in the province of Quebec, merchant, do solemnly declare:—

1. That the alleged combine operates to my detriment as a consumer.

2. That to the best of my knowledge and belief the combine alleged in the foregoing statement exists and that such combine is injurious to trade and has operated to the detriment of consumers and producers in the manner and to the extent described.

3. That it is in the public interest that an investigation should be had into such combine.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the city of
 Quebec in the county of Quebec }
 this 12th day of November, 1910.]

(Sgd.) NAP. DROUIN.

(Sgd.) ULRIC GELLY,
C.S.C. Dist. of Quebec.

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CANADA,
Province of Quebec,
To Wit:

I, Louis Letourneau, of the city of Quebec, in the province of Quebec, merchant, do solemnly declare:—

1. That the alleged combine operates to my detriment as a consumer.

2. That to the best of my knowledge and belief the combine alleged in the foregoing statement exists and that such combine is injurious to trade and has operated to the detriment of consumers and producers in the manner and to the extent described.

3. That it is in the public interest that an investigation should be had into such combine.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the city of
Quebec, in the county of Quebec, }
this 10th day of November, 1910.]

(Sgd.) L. LETOURNEAU.

(Sgd.) ULRIC GELLY,
C.S.C. Dist. of Quebec.

CANADA,
Province of Quebec,
To Wit:

I, Eugene Lamontagne, of the city of Quebec, in the province of Quebec, merchant, do solemnly declare:—

1. That the alleged combine operates to my detriment as a consumer.

2. That to the best of my knowledge and belief the combine alleged in the foregoing statement exists and that such combine is injurious to trade and has operated to the detriment of consumers and producers in the manner and to the extent described.

3. That it is in the public interest that an investigation should be had into such combine.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the city of
Quebec, in the county of Quebec, }
this 10th day of November, 1910.]

(Sgd.) EUG. LAMONTAGNE.

(Sgd.) ULRIC GELLY,
C.S.C. Dist. of Quebec.

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CANADA,
Province of Quebec,
To Wit:

I, Michel Brunet, of the city of Quebec, in the province of Quebec, manufacturer, do solemnly declare:—

1. That the alleged combine operates to my detriment as a consumer and producer.

2. That to the best of my knowledge and belief the combine alleged in the foregoing statement exists and that such combine is injurious to trade and has operated to the detriment of consumers and producers in the manner and to the extent described.

3. That it is in the public interest that an investigation should be had into such combine.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the city of
Quebec, in the county of Quebec, }
this 11th day of November, 1910.]

(Sgd.) DR. MICHEL BRUNET.

(Sgd.) ULRIC GELLY,
C.S.C. Dist. of Quebec.

CANADA,
Province of Quebec,
To Wit:

I, Joseph Etienne Samson, of the city of Quebec, in the province of Quebec, manufacturer, do solemnly declare:—

1. That the alleged combine operates to my detriment as a consumer and producer.

2. That to the best of my knowledge and belief the combine alleged in the foregoing statement exists and that such combine is injurious to trade and has operated to the detriment of consumers and producers in the manner and to the extent described.

3. That it is in the public interest that an investigation should be had into such combine.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the city of
Quebec, in the county of Quebec, }
this 11th day of November, 1910.]

(Sgd.) J. E. SAMSON.

(Sgd.) ULRIC GELLY,
C.S.C. Dist. of Quebec

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CANADA,
Province of Quebec,
To Wit:

I, Robert Stewart, of the city of Quebec, in the province of Quebec, do solemnly declare:—

1. That the alleged combine operates to my detriment as a consumer
2. That to the best of my knowledge and belief the combine alleged in the foregoing statement exists and that such combine is injurious to trade and has operated to the detriment of consumers and producers in the manner and to the extent described.
3. That it is in the public interest that an investigation should be had into such combine.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the city of
Quebec, in the county of Quebec, }
this 12th day of November, 1910.]

(Sgd.) ROBERT STEWART.

(Sgd.) ULRIC GELLY,
C.S.C. Dist. of Quebec.

CANADA,
Province of Quebec,
To Wit:

I, J. Alphonse Langlois, of the city of Quebec, in the province of Quebec, do solemnly declare:—

1. That the alleged combine operates to my detriment as a consumer.
2. That to the best of my knowledge and belief the combine alleged in the foregoing statement exists and that such combine is injurious to trade and has operated to the detriment of consumers and producers in the manner and to the extent described.
3. That it is in the public interest that an investigation should be had into such combine.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the city of
Quebec, in the county of Quebec, }
this 11th day of November, 1910.]

(Sgd.). J. A. LANGLOIS.

(Sgd.) ULRIC GELLY,
C.S.C. Dist. of Quebec.

SESSIONAL PAPER No. 36c

CANADA,

Province of Quebec,

To Wit:

I, Joseph Picord, of the city of Quebec, in the province of Quebec, manufacturer, do solemnly declare:—

1. That the alleged combine operates to my detriment as a consumer.

2. That to the best of my knowledge and belief the combine alleged in the foregoing statement exists and that such combine is injurious to trade and has operated to the detriment of consumers and producers in the manner and to the extent described.

3. That it is in the public interest that an investigation should be had into such combine.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the city of }
Quebec, in the county of Quebec, }
this 11th day of November, 1910. }

(Sgd.) JOS. PICORD.

(Sgd.) ULRIC GELLY,

C.S.C. Dist. of Quebec.

CANADA,

Province of Quebec,

To Wit:

I, Ernest Caron, of the city of Quebec, in the province of Quebec, manufacturer, do solemnly declare:—

1. That the alleged combine operates to my detriment as a consumer and producer.

2. That to the best of my knowledge and belief the combine alleged in the foregoing statement exists and that such combine is injurious to trade and has operated to the detriment of consumers and producers in the manner and to the extent described.

3. That it is in the public interest that an investigation should be had into such combine.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the city of }
Quebec, in the county of Quebec, }
this 10th day of November, 1910. }

(Sgd.) ERNEST CARON

(Sgd.) ULRIC GELLY,

C.S.C. Dist. of Quebec.

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CANADA,
Province of Quebec,
To Wit:

I, Charles W. Walcot, of the city of Quebec, in the province of Quebec, do solemnly declare:—

1. That the alleged combine operates to my detriment as a consumer.

2. That to the best of my knowledge and belief the combine alleged in the foregoing statement exists and that such combine is injurious to trade and has operated to the detriment of consumers and producers in the manner and to the extent described.

3. That it is in the public interest that an investigation should be had into such combine.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the city of
Quebec, in the county of Quebec, }
this 12th day of November, 1910.]

(Sgd.) C. W. WALCOT.

(Sgd.) ULRIC GELLY,
C.S.C. Dist. of Quebec.

DECISION AS TO POINTS OF PROCEDURE.

At the hearing of the above application before the Honourable Mr. Justice Cannon in Quebec, objection was taken by Mr. T. C. Casgrain, K.C., who appeared as counsel for the United Shoe Machinery Company of Canada, to the hearing of this application in Quebec. Mr. Casgrain submitted that the application should have been made in the district of Montreal where the company had its principal office in Canada, and accordingly submitted a motion to this effect. Reply was made thereto by Mr. A. Falconer, K.C., on behalf of the applicants, that the company had also an office in Quebec, and that the application could be made, therefore, before a Quebec judge. Mr. Casgrain's motion was dismissed by the Honourable Mr. Justice Cannon on December 10. An appeal from this judgment was taken by Mr. Casgrain to the Honourable Mr. Justice Carroll of the Court of Appeals. The matter was referred by the latter to the five judges of the Court of Appeals of Quebec, and judgment was given by the latter on February 8, dismissing the said appeal. Hearing was then continued before the Honourable Mr. Justice Cannon on February 10, who on February 25, issued an order as above stated. The order establishing the Board was in the following terms:—

TERMS OF ORDER ESTABLISHING BOARD.

In the matter of the application of Napoléon Drouin, Louis Létourneau, Eugène Lamontagne, Michel Brunet, Joseph-Etienne Samson, Joseph Picard, Ernest Caron,

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J. Alphonse Langlois, Robert Stewart, Charles W. Walcot, all of the city of Quebec, dated the tenth day of November, 1910, for an order directing an investigation under the 'Combines Investigation Act' into an alleged combine with regard to the manufacture and sale of machinery for manufacturing boots and shoes.

I, the Honourable Lawrence John Cannon, a judge of the Superior Court for the province of Quebec, after having read the application of Napoléon Drouin, Louis Létourneau, Eugène Lamontagne, Michel Brunet, Joseph-Etienne Samson, Joseph Picard, Ernest Caron, J. Alphonse Langlois, Robert Stewart and Charles W. Walcot, dated the tenth day of November, 1910, the statement and statutory declarations accompanying the same and the evidence produced by the said applicants, am satisfied that there is reasonable ground for believing that a combine exists with regard to the manufacture and sale of machinery for manufacturing boots and shoes, which has operated to the detriment of consumers and producers, and that it is in the public interest that an investigation should be held, and I do therefore direct that an investigation be held, under the provisions of the said Act, into the following matters, that is to say:—

The United Shoe Machinery Company of Canada, a corporation organized under the laws of the state of New Jersey, one of the United States of America, herein after referred to as the 'company,' deals in machinery of practically all kinds required and used in manufacturing boots and shoes, and also in supplies used in the making of boots and shoes. The company does not, and for years past has refused to sell its machines, but leases them to manufacturers who may require them for use in their business, and one or more of the machines controlled by the company have heretofore been used in all boot and shoe factories as part of their customary equipment. All, or practically all, the leases are under written contracts for long periods, usually of twenty years, each covering one machine, and are therefore practically interminable, and these contracts contain certain conditions such as the following, which are extracted from some of said contracts:—

'The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.'

'The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscription now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the leased machinery, without the consent in writing of the lessor, nor interfere with the proper operation of the same.'

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‘The lessee shall use the leased machinery to its full capacity on all boots, shoes and other footwear made in his factory in the manufacture of which it can be used, but the leased machinery shall not, nor shall any part thereof, be used in the manufacture of any boots, shoes or other footwear which are or shall be welted or the soles stitched on welt sewing or sole stitching machines not leased from the lessor, or in the manufacture of any turn boots, shoes or other footwear, the soles of which are or shall be attached to their uppers by turn sewing machines not leased to the lessee by the lessor, or in the manufacture of any boots, shoes or other footwear, which have been or shall be pegged, slugged, heel-seat nailed, or otherwise partly made by the aid of any pegging or metallic machinery not leased to the lessee by the lessor or its assignor.’

‘If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes or other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use exclusively tacking mechanisms and appliances held by him under lease from the lessor for doing all work in the manufacture of all boots, shoes and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option, terminate forthwith by notice in writing this lease and license and any other lease or license of lasting machines, lasting machinery, lasting mechanisms, or lasting devices then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and the possession of and full right to and control of all the leased machinery, and all lasting machines, lasting machinery, lasting mechanisms and lasting devices held by the lessee under any other lease or license from the lessor or its assignors shall thereupon revert in the lessor free from all claims and demands whatsoever.’

‘The lessee agrees as rent or royalty for the said machinery to purchase of the lessor, at the prices established by the lessor all the fastening materials used by him or in connection with the said machinery.’

‘The lessee admits the validity of each and every of the Letters Patent of the Dominion of Canada owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery, and agrees that he will not directly or indirectly infringe or contest the validity of, or the title of the lessor to, any of said patents. The termination or cesser of this lease and license from any cause whatever shall not in any way effect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth.’

The company will not sell its machines, nor will it lease them except on conditions such as above recited, and such has been its practice for many years past, and therefore all, or practically all the boot and shoe machinery now in use in Canada is held subject to conditions as hereinbefore set forth.

A number of the machines are protected by Canadian patents and can be obtained only from the company. Boot and shoe manufacturers requiring any of these

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machines can obtain them only on condition of signing contracts such as above indicated, and by the terms of such contracts are forced to buy all or practically all of their other machinery, and a large part of their supplies, from the company.

Among the more important machines covered by such contracts are lasting machines, eyeletting machines, channelling machines, turners, screw machines, slugger machines, tacking machines, nailing machines, pegging machines and compressing machines.

Inasmuch as the company has heretofore for a long period kept control of the market for shoe machinery by every means in its power, especially by insisting on leases as aforesaid, practically all manufacturers of boots and shoes are in consequence bound to it by contracts containing conditions as aforesaid and unable, except at the cost of complete disorganization of their factories and at excessive expense, to purchase or acquire any machines they may require or deem useful in their business except from the company. The result is that manufacturers of boots and shoes all throughout Canada are absolutely tied down to the company, compelled to buy the company's machines, parts and supplies, as provided in their contracts, at the company's own prices, and are deprived of the benefit of all competition.

The contracts, agreements and acts of the company as aforesaid constitute an arrangement which is a combine within the meaning of the Act.

Moreover, the said company is the Canadian representative of the United Shoe Machinery Company, of Boston, a foreign corporation, and is owned or controlled by the said last mentioned or parent corporation or interests allied thereto and in the interest and advantage of the said parent corporation.

The said parent corporation is a combination, merger or amalgamation of numerous companies manufacturing and dealing in boot and shoe machinery, and controls in the United States the business of manufacturing and dealing in boot and shoe machinery in a somewhat similar way and extent to those above indicated as the method and extent of the control of the boot and shoe machinery business in Canada by the United Shoe Machinery Company of Canada.

The said United Shoe Machinery Company of Canada and its various contracts, agreements and arrangements above set out, and the control of the said boot and shoe machinery business in Canada, as aforesaid, constitutes a trust, monopoly, merger and a combine within the meaning of the Act

The said combine affects prices as follows:—

It compels all manufacturers of boots and shoes having contracts with the company or requiring any one of their machines to obtain all their machinery from it, also to buy from the company certain supplies used in the manufacture of boots and shoes. It prevents them from buying machinery that would do the same or better work from other manufacturers or dealers, and in like manner restricts their purchase of supplies. It thus places them at the mercy of the company as regards prices for machinery and supplies, increases the cost of their machinery and supplies

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and thus increases the cost of the manufactured article, boots and shoes. By thus increasing the cost of manufacture, the price to the consumer is thereby increased on all the principal lines of boots and shoes. The percentage of such increase the applicants are unable to state, but it must be large, for the extra cost of supplies purchased from the company used in connection with the metallic system alone is between forty and fifty per cent over the cost of similar supplies in the open market.

The said combine also restricts competition in machinery used in the manufacture of boots and shoes, as it destroys the market for all other manufacturers of and dealers in such machinery, who are unable to make sales to boot and shoe manufacturers. It prevents the establishment of Canadian industry in the making of such machinery, and keeps the whole of such business in the hands of the company, and it stifles all incentive to invention or improvement in machines, the more so as the company insists on the letter of its contract and invokes the aid of the courts to prevent the purchase by manufacturers of boots and shoes of any machines other than its own. On the other hand, the company's unchallenged control of the shoe machinery industry in the past has been so complete that there has been no incentive on its part for effort to improve its machinery.

This combine also by increasing the cost of the manufacture of boots and shoes, and thus necessarily making the selling price of the manufactured article higher, restricts the manufacturers' sales, and thus to some extent injures the manufacturer, as well as the consumer.

It works to the detriment of makers of competing machines, as it prevents the sales of such machines.

The company is the holder of the patents under the Patents Act, and has made use of the exclusive rights and privileges which as such holder it controls, so as to restrain and injure trade or commerce as aforesaid.

The names of the persons said to be concerned in the alleged combine are:—The United Shoe Machinery Company of Canada, and its officers and agents, more especially, Sidney W. Winslow, its president, and George W. Brown, its general manager and treasurer both resident in or near Boston, in the Commonwealth of Massachusetts, and Frank W. Knowlton, of Montreal, its manager and agent of the business in Canada; and also the various boot and shoe manufacturers in Canada with whom such contracts are made, among others, The John Ritchie Company, Limited, The William Marsh Company, Limited, Tourigny & Marois, The Louis Gauthier Company, all of the city of Quebec, and also J. B. Blouin & Company, of the town of Lévis.

And I am of opinion that the Minister of Labour should communicate with Frank W. Knowlton, of the city of Montreal, manager and agent of the business in Canada of the said United Shoe Machinery Company of Canada, in order to obtain the recommendation for the appointment of a person as a member of the Board of Investigation on behalf of those concerned in the said alleged combine.

Dated at Quebec, this twenty-fifth day of February, 1911.

(Sgd.) L. J. CANNON,
Judge Superior Court.

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ESTABLISHMENT OF BOARD BY MINISTER OF LABOUR.

On receipt of the above order in the Department, communications were at once addressed to Mr. A. Falconer, K.C., of Montreal, on behalf of the applicants, and to Mr. Frank W. Knowlton, of Montreal, manager of the United Shoe Machinery Company of Canada, on behalf of persons named in the judge's order as being concerned in the alleged combine, stating that the Minister of Labour was proceeding forthwith to establish a Board in this matter as directed, and calling upon each of the parties concerned to furnish him with the name of a person qualified and ready to act as a member of the Board. Mr. Joseph C. Walsh, journalist, of Montreal, and Mr. William J. White, K.C., of Montreal, were appointed by the Minister as members of the Board, on the recommendation respectively of the applicants and of the persons named in the judge's order as being concerned in the alleged combine. The Board was completed on March 16, by the appointment of the Honourable Mr. Justice Charles Laurendeau, of the Superior Court, Montreal, as third member and chairman, this appointment being made on the joint recommendation of the other two members of the Board.

The Department was informed that the preliminary meeting of the Board of Investigation was held in Montreal, on March 21, adjournment being made in order to afford time for the employment of clerical and stenographic assistance and for purposes of organization.

APPEAL TO COURTS AGAINST ESTABLISHMENT OF BOARD.

On March 1 the Minister received from Messrs. McGibbon, Casgrain & Mitchell, of Montreal, solicitors for the United Shoe Machinery Company of Canada, a certified copy of an inscription in appeal to the Court of King's Bench from the judge's order for investigation in this matter; also a list of proceedings in the above court showing that the appeal in question had been instituted.

On March 22, a petition was filed on behalf of the United Shoe Machinery Company of Canada in the Superior Court, Montreal, for the issue of a writ of prohibition enjoining the above mentioned Board of Investigation from proceeding with its inquiry, also asking that it be declared that the said Board of Investigation was acting without jurisdiction and illegally, and that the appointment of the said Board be declared illegal. The petition in question recited the proceedings which had already taken place before Judge Cannon, in Quebec, and asked that the judge's order and the appointment of the Board be declared illegal, for among others, the following reasons:—Because the application was invalid; because the application was not made by six persons, British subjects resident in Canada, to the detriment of whom the alleged combine operated as consumers or producers; because no order for investigation should have been given without the United Shoe Machinery Company having an opportunity of answering the same and filing a defence, and also having an opportunity of showing that the same was unfounded in law and in fact; because the company's defence and answer to the said application were rejected by Judge Cannon; because the Board of Investigation had illegally purported to act as a tribunal of inferior jurisdiction and assumed a jurisdiction which it did not in law possess;

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because the constitutional rights of the company had been violated and set aside; because an appeal from the order of Judge Cannon had been legally instituted by which the execution of the judge's order was by law suspended until final adjudication upon the said appeal, the Board having no right to proceed in the premises until the said appeal had been finally adjudicated upon.

Upon being apprised of the above petition of the United Shoe Machinery Company of Canada, Mr. Amie Geoffrion, K.C., of Montreal, was instructed on March 23 to appear on behalf of the Dominion government to oppose the issue of such writ of prohibition. The hearing of the petition was held before the Honourable Mr. Justice A. A. Bruneau, of the Superior Court, Montreal, judgment being given by the court on April 1, which permitted the issue of a writ of prohibition against the Board of Investigation, and also granted an interlocutory order suspending proceedings before the Board until June 15 next.

Information has been received while this report is in the press showing that the appeal to the Court of Appeal of Quebec was dismissed on May 16, on the ground that no appeal lay from an order granted under the Act. The Minister was then notified that The United Shoe Machinery Company would apply for leave to appeal from this decision to the Privy Council. The Minister requested the Department of Justice to oppose the application, and on July 12 it was ascertained that the application had been refused. In the meantime the writ of prohibition issued on April 1 had lapsed on June 15, and on that date was renewed until September 15, suspending proceedings before the Board until that date.

I have the honour to be, sir,

Your obedient servant,

F. A. ACLAND,
*Deputy Minister of Labour and
Registrar of Boards of Investigation.*

